

No. 04-4200

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

DONNA NICHOLS ex rel.  
DONALD MOELLER,

Plaintiff,

v.

DOUGLAS WEBER et al.,

Defendants.

NOTICE OF APPEAL BY NEXT FRIEND

Pursuant to *Ford v. Haley*, 179 F.3d 1342 (11th Cir. 1999), *vacated by* 195 F.3d 603, 624 (1999), Donna Nichols, by and through undersigned counsel, and as the next friend of Donald Moeller, respectfully notices appeal of this Court's Memorandum Opinion and Order [Doc. 374] of October 10, 2012. In support of this Notice, Ms. Nichols attaches as Exhibit 1 a declaration describing her relationship Mr. Moeller. The undersigned appreciates that this Court is of the view that Mr. Moeller is competent and does not need a next friend but, as in the *Ford* case, believes that Ms. Nichols has standing "to the limited extent necessary to appeal the mental competency rulings" that ended this litigation. 195 F.3d at 605 & n.1.

Respectfully submitted,

/s/ Robert Van Norman

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**CERTIFICATE OF SERVICE**

I hereby certify that, on October 18, 2012, I electronically filed the foregoing in the United States District Court for the District of South Dakota and that the CM/ECF system shall automatically serve all counsel.

/s/ Robert Van Norman

Robert W. Van Norman

DECLARATION OF DONNA STELZER NICHOLS

I, Donna Stelzer Nichols, do hereby declare the following:

1. My name is Donna Stelzer Nichols. I was born on August 29, 1954 and my parents are Robert Stelzer and Agnes "Tookey" Becker. My biological siblings are Deb Stelzer Larson, David Stelzer, and Douglas Stelzer. I <sup>used to DN</sup> work in the billing department for Kreiser's Medical Equipment, which is owned by my brother-in-law, <sup>Dave DN</sup> John Larson. I have worked there for 15 years. I know Donald Moeller and his brothers because my mother Tookey was married to their step-father and father, Glen Becker Sr.

2. I married Les Johnson on June 24, 1972 and divorced him on May 13, 1983. Les was violently abusive, giving me scars and breaking my jaw. During one fight, I fell out of a moving car. We had my daughter Kimberly Johnson together. I married John Nichols on September 12, 1988 and am still married to him today. <sup>DN</sup> ~~We had my daughter Amanda Nichols together.~~

3. I met Donald Moeller after my mother, Agnes Becker, married Glen Becker, Sr. on July 21, 1972. I used to visit Melvina Christman's home with my mother, Agnes Becker. Melvina did not take good care of her children, they were very neglected. My mother Agnes Becker would have to purchase new clothes for the Becker boys. However, all their clothes soon turned to rags because Melvina Christman never washed them. The first time I went over to their house was in 1972, when my mother went over to pick up the boys. The house was so filthy: beer cans were all over the place, and Melvina was drunk. On another occasion, Melvina was in the kitchen butchering chickens. ~~There were blood, feathers, and clucking all over the~~ <sup>DN</sup> ~~kitchen.~~ There was blood and feathers all over the kitchen.

4. Richard Christman was married to Melvina Christman. He was over-weight and wore black horn-rimmed glasses. He, too, was a drunk. He was dirty and smelled. He always gave me a look like he wanted to be alone with me, which repulsed me. I remember him boasting about working on the butchering line and pulling guts out of a hog. According to Rich, the intestines burst and shit went flying all over him. Rich proudly said that he was such a man, because he took off his glasses, licked the shit off of them, and continued working on the hog.

5. The Becker brothers were not a good crowd to hang out with. For instance, my brother David never thought of drugs when he was younger. He was very naïve about drugs. He loved to fish and be outside. However when he started hanging with the Becker boys, he learned how to huff and get high. David would later die in Chicago while huffing Pam, he was with one of the Becker boys up there. I never saw anything good in these boys, but I did see goodness in but I do not know if David was with him when David died. *DN* their half-brother, Donald Moeller.

6. In 1978, Les Johnson and I were living in Wright, Wyoming. Wright actually was a town made up by trailers. Even the post office and the grocery store were in a trailer. The new town was building up around a coal mine and oil rigs. Les worked as a crane operator, and I worked in the bar and restaurant serving drinks, chili, and grilled cheese sandwiches.

7. Don was having a hard time getting a job because of his past criminal history. Les and I thought that Donald needed a fresh start, and we invited him to come live with us out in Wright, Wyoming. Les, I, my brother Douglas Stelzer, and Donald lived in the trailer. Donald Moeller got a job working as a "roustabout" on some oil rigs around Wright, Wyoming. As a roustabout, Donald maintained the rigs. Donald worked at his job from around 6:00 a.m. until the sunset, sometimes for 12 hours a day. This job suited Donald, and he had no problems there.

8. In the evenings, Donald Moeller came home and played on the floor with my daughter, Kimberly. I completely trusted Donald with my daughter because he was so tender-hearted with her. At Christmas time in Wyoming, I purchased Donald Moeller some presents. Donald was so moved that he cried, because no one had ever given him a Christmas present before this moment.

9. Donald Moeller told me that when he was a very small boy, his mother Melvina Christman used to dress him in dresses, because she really wanted a daughter and not a son.

10. Donald Moeller was put into jail, but I continued to visit him, because I did not want to abandon him. I could not go see him in the Wyoming Penitentiary, because it was so far away.

11. Prior to the current charge against Donald Moeller, Donald came over to John Nichol's and my home in Sioux Falls, South Dakota, because he helped John change the storm windows. After Becky Connell's murder, people were so edgy in Sioux Falls. A month after the murder, my own daughters, 12-year-old Kimberly Johnson and three-year-old Amanda Nichols went missing. Actually, a neighborhood woman came over to my home at 3:30 or 4:00 p.m., while I was away, and asked Kimberly if she would baby-sit the woman's children. Kimberly agreed and took Amanda to the woman's trailer. When I came home, I could not find my children. I looked everywhere. I called the police, and strangely the police immediately asked me whether I knew Donald Moeller and if would have had access to my home in the past. I told them that he was part of my family, and he had recently helped us put up storm windows. The police told me that I should not move anything in the home in case there were hair fibers that he left behind. I was shocked, because Donald did not even come to my mind as a possible suspect, and he was so tender-hearted with Kimberly. At 3:30 or 4:00 a.m., Kimberly and Amanda came

home from the woman's home, unaware of the trouble they had caused. I was angry that the police had so quickly suspected Donald.

12. Right after Donald Moeller was caught in the state of Washington, he was returned to South Dakota. Although it was so cold out, the news programs showed him coming off the plane without a coat and in flip-flops. Meanwhile the escorting police were all bundled up in parkas. The radio stations talked all day about Donald Moeller, and, on one station, people called in and insisted that Donald be lynched. My mother, Agnes Becker, was so upset, because she loved him so much, and I was furious. Finally, I had had enough, so I called the station. They put me on the air, and I told the radio announcer and the listeners, "I am sorry about Becky and am sorry for her family. But Don has a family, too. So lay off!" The radio announcer changed his tone about Donald after my call.

13. No one representing Donald Moeller came to talk to me about any of these things at the time of either of Donald's trial. If I had been asked to, I would have given this information to Donald's lawyers and I would have testified to it at both of his trials.

I declare under penalty of perjury under the laws of the United States and the State of South Dakota that the above statement is true and correct to the best of my ability.

Date Jan 16<sup>th</sup> 2012

Donna Stelzer Nichols  
Donna Stelzer Nichols